

Reflections on the Sharing of Benefits from Australian Impact Benefit Agreements (IBAs)

Based on the Pre-Forum Interview and Forum Presentation
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In North Australia, many issues related to the sharing of benefits from non-renewable resource projects are playing out at the local level. Aboriginal groups have substantial capacity to negotiate IBAs on resource development projects, negotiating significant revenues, sometimes in the order of 2-3% of gross project revenues. Different ways of managing these revenues are being explored. Three models were presented to the Forum.

These agreements reflect various approaches to addressing a number of tensions including: (1) current consumption versus longer-term investment; (2) addressing today's acute needs (which could mean immediate consumption or investment in current commercial activity to generate jobs) versus setting aside resources for future needs; and (3) generating long-term cash flow through investment in commercial activities today (which can be more risky) versus generating long-term cash flow through investment in financial instruments (which can be less risky).

The IBAs reflected in these models were a result of discussions between private companies and Aboriginal groups. The Australian Native Title Act creates "some room." However, government, while supportive, did not play an active role; these are non-government initiatives entirely. For



their part, companies like the idea of long-term investment. However, it has been the Elders who have insisted on revenue generation from IBA's.

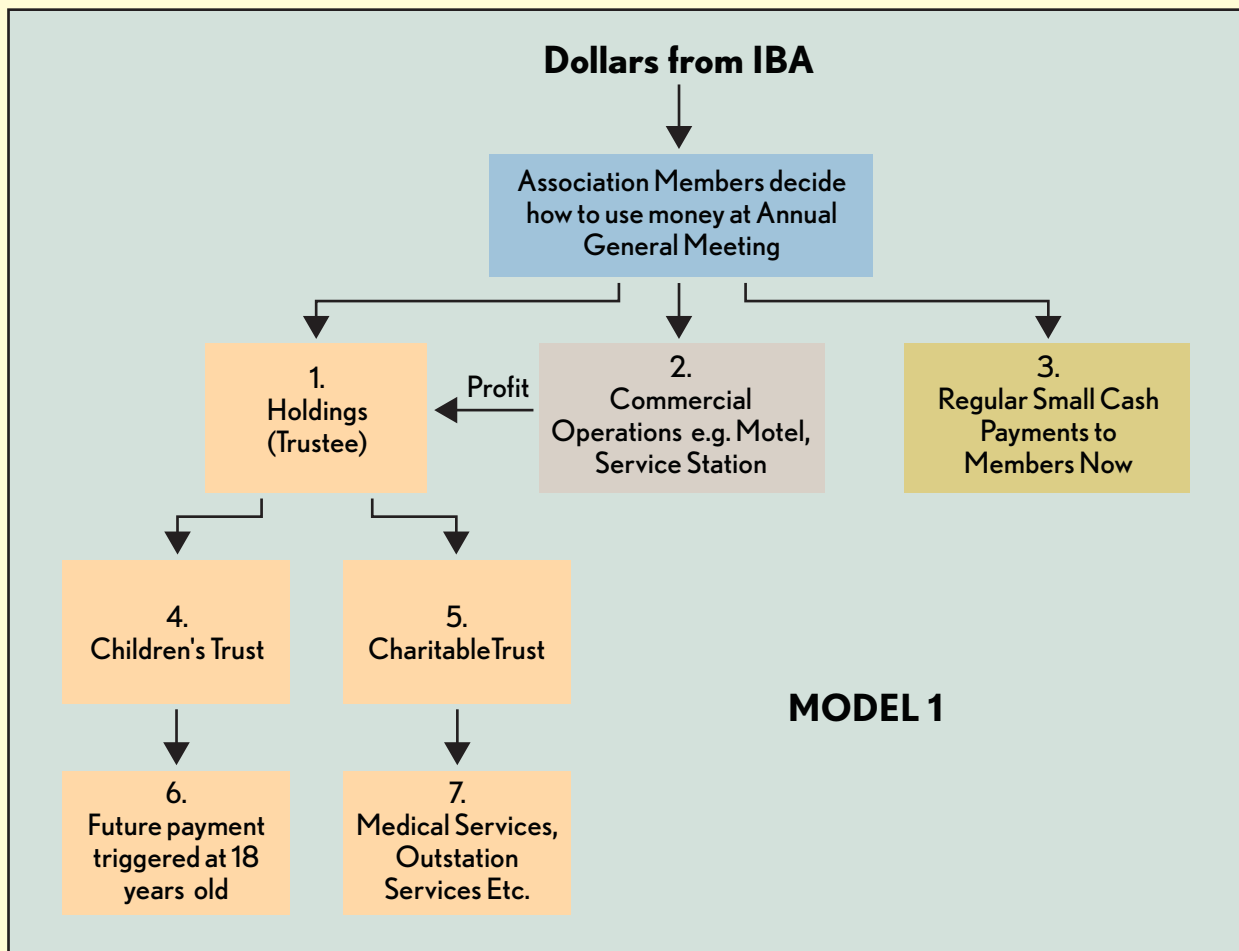
Two important lessons are worthy of emphasis:

1. Often there is a focus on the various instruments themselves rather than the process used to get there. It is essential to involve those directly affected, following relationship protocols that respect their culture. Without doing so, the most elegant, analytically "correct" arrangements will fail for lack of legitimacy.
2. The process of decision-making and who is accountable for what, needs clarification before entering into the detailed discussion of long terms benefit sharing and concrete steps for achieving them.

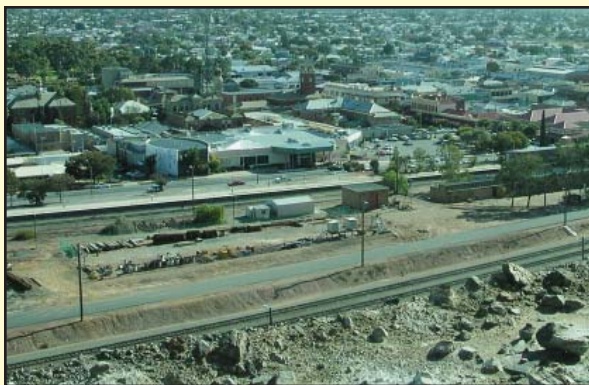
Individual Impact Benefit Agreements are almost always confidential and not available for public review. Unfortunately, this has limited the opportunity to learn from experience. In the material below, an attempt has been made to respect the privacy of individual agreements by removing all references to the parties involved.

Model 1.

Model 1 is an example stemming back to significant mining revenues being received in the 1980s. In this case, the entire community was constituted as an Association that meets annually in a decision-making capacity. In the initial meeting and after considering a number of options, the arrangement shown below was created. Each year the Association meets for 2-4 days to decide on how the revenues will be spent in the forthcoming year. Revenues from mining activities were put to three categories: (1) a holding mechanism; (2) commercial investments intended to generate profit; and (3) immediate regular cash payments



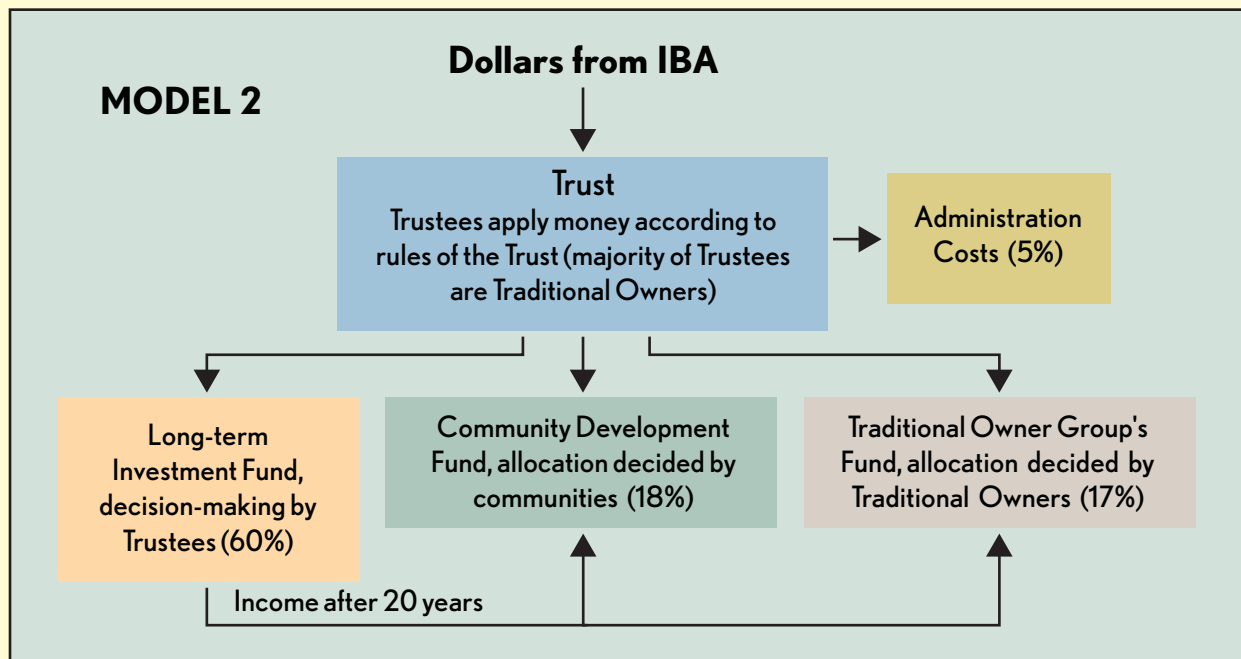
to members. The holding mechanism (governed by a group of Trustees) distributed money to (4) a tax-exempt trust for future generations which subsequently distributed payments to individuals (6) at age 18 and (5) a tax-exempt charitable trust that used its resources to support (7) needed medical and social services.



In practice, this model led to significant problems over time. Initially and as long as mineral prices were high (about a decade), the model worked well. However, when metal prices dropped, and labour strife occurred, their capacity to service debt incurred for the commercial operations collapsed. In addition, requests to the community to transfer the regular cash payments to individuals over to debt payment were refused. Loans were defaulted on, and by the mid-1990s, many economic assets were lost and the capacity to make payments to individuals was severely curtailed.

Insights:

1. The design of the decision-making process is critical; there needs to be a capacity to consider not only immediate but also long-term implications of decisions.



2. Immediate and regular cash payments to individuals may lead to a dependency that clouds effective long-term decision-making.
3. A mechanism that can ensure maintenance of a long-term benefits stream is essential.
3. 17% goes to a Traditional Owners Group Fund. The Traditional Owners, the people whose land is being mined, decide on its allocation.
4. 5% is put to defray ongoing administration costs.

Model 2.

This model is of note because the distribution structure of financial benefits received through the IBA is embedded in the IBA itself. This step was taken because the community did not want to wait until the money was in hand to decide on what to do with it. Rather, they wanted to proactively come to an internal agreement on its fair distribution. They also felt politically vulnerable and wanted to ensure long-term security. As a result of these discussions, revenues from mining are placed in a Trust that has the following four components:

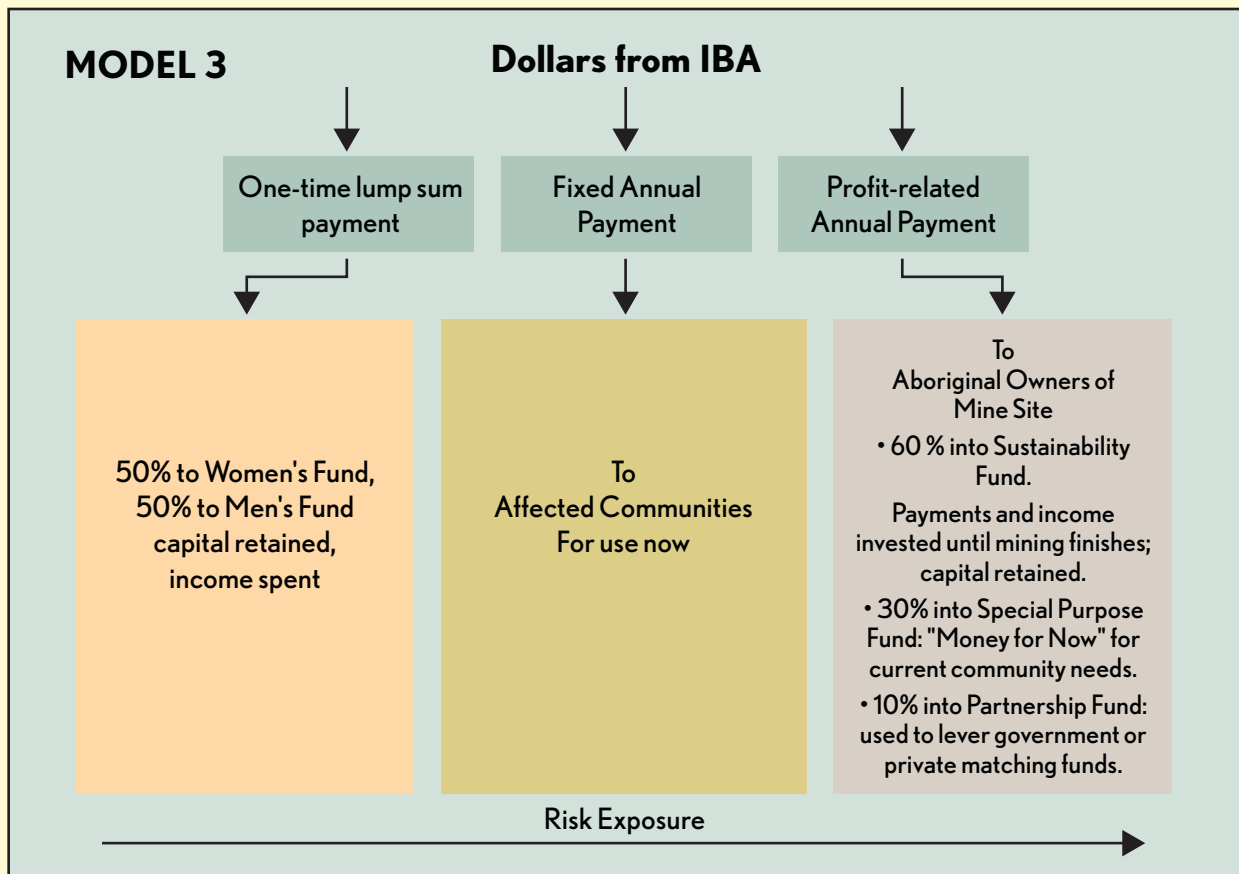
1. 60% of all income is placed in a long-term investment fund. All income from this stream is re-invested after 20 years.
2. 18% is placed in a Community Development Fund. Income from this fund is made available for Community Development after 20 years. The communities themselves decide on its allocation.

In this model, there are no individual payments or benefits. It adheres to a principle that everyone is affected by the mining therefore everyone should benefit. However, those whose land is mined are more affected therefore their benefit or compensation is greater – they double dip.

There are significant tensions. These are poor communities with desperate needs now. Many question why resources are being put away when such serious current needs exist. In this case, no money at all was distributed in the first three years.

Insights:

1. A focus on long-term security alone may lead to a sense of unfairness that current needs are being ignored or at least under-emphasized.
2. Proactive consideration of the distribution of benefits prior to the actual receipt of benefits may lead to a longer-term perspective being



more effectively entrenched in the distribution mechanism.

3. Entrenching the distribution mechanism in the IBA itself may effectively protect a community from political interference.



Model 3.

In this case, mining activities pre-dated the development of the IBA by some 30 years. As a result, a range of different risks held by various interests had to be addressed and a number of existing agreements required integrating through the use of “grandfather clauses.” In addition, the particular cultural practices of the aboriginal people had to be respected. As a result, three types of benefits payments were negotiated: (1) single lump sum; (2) fixed annual payment; and (3) profit-related annual payment.

Insights

1. The varying degree of risk carried by various parts of the local indigenous community may have to be recognized in the allocation formula within the IBA.
2. Sensitivity to local cultural nuances is essential and may lead to significant variations in the allocation formula used in any given IBA.